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**HEALTH SYSTEMS BRANCH  
HEALTH FACILITIES EVALUATION AND LICENSING  
DIVISION**

**OFFICE OF CERTIFICATE OF NEED AND  
HEALTHCARE FACILITY LICENSURE**

**Administrative and Hospital-Wide Services,  
Emergency Department, and Obstetrics in  
Hospital Licensing Standards**

**Proposed Amendments: N.J.A.C. 8:43G-5.5, 12.2,  
12.4, 19.1, 19.2, 19.3, 19.12, 19.14, 19.15, 19.30,  
19.31, 19.34, and 36.3**

**Proposed New Rule: N.J.A.C. 8:43G-19.9**

Authorized By: Mary E. O'Dowd, M.P.H., Commissioner,  
Department of Health (with the Approval of the Health Care  
Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., particularly 26:2H-5; and 26:2-  
111.4.

Calendar Reference: See Summary below for explanation of  
exception to calendar requirement.

Proposal Number: PRN 2013-024.

Submit electronic comments to <http://www.nj.gov/health/legal/ecomments.shtml> or written comments by April 5, 2013 to:

Walter C. Kowalski, Acting Director  
Office of Legal and Regulatory Compliance  
New Jersey Department of Health  
P.O. Box 360  
Trenton, New Jersey 08625-0360

The agency proposal follows:

**Summary**

The Department of Health (Department) is proposing to amend, and add a new rule to, the Hospital Licensing Standards, as authorized by N.J.S.A. 26:2H-5, to advance the quality of care provided in New Jersey hospital obstetrics units. Specifically, the proposed amendments and new rule are agency-initiated, developed by the Division of Health Facilities Evaluation and Licensing at the recommendation of the Division of Family Health Services (FHS), Public Health Systems Branch. FHS identified a correlation between breastfeeding and lower incidence of chronic disease, most notably childhood obesity. As such, FHS's findings support establishing successful breastfeeding practices while mother and infant are in the hospital in order to acquire the health benefits associated with breastfeeding.

Drawing on the conclusions from the Department's research and ongoing public health activities, the proposed rulemaking provides a framework for hospitals to play a key role in the promotion of healthier lifestyles in New Jersey. The Department's overarching goal with this rulemaking is to improve maternal-infant health outcomes by establishing healthy practices in a manner that respects maternal choice beginning in the hospital at the time of birth.

To develop the proposed amendments and new rule, the Department worked extensively with a group of external stakeholders that included distinguished professionals in breastfeeding, hospital operations, and pediatrics. In addition, the Department recognizes the New Jersey Breastfeeding Coalition's advocacy efforts and ongoing interest in supporting the practice of breastfeeding in the State. On a broader scale, entities such as the World Health Organization, the U.S. Department of Health and Human Services, and the United States Breastfeeding Committee have established initiatives that promote the long-lasting health benefits derived from exclusive breastfeeding that is begun at birth and continued until at least six months of age. These initiatives have informed the development of this rulemaking and represent a coordinated effort to assist the Department in achieving its stated goal.

The aim of the proposed rulemaking, which would benefit New Jersey residents, is to increase exclusive breastfeeding rates, improve health outcomes of mothers and infants, reduce childhood obesity rates, and

contain healthcare costs. The proposed amendments and new rule would support breastfeeding during the early postpartum period and throughout the breastfeeding relationship when the breastfeeding mother and/or child receive hospital services. New Jersey would be one of only four states, including New York, California, and Massachusetts, that require hospitals to establish policies that encourage breastfeeding.

The proposed amendments and new rule would ensure that all New Jersey mothers are provided education on the options for feeding their newborns. The proposed amendments and new rule would provide education, support, and community resources for all mothers consistent with exclusive breast feeding, formula feeding, or a combination of both, as applicable.

The Department anticipates the proposed amendments and new rule would foster cost-effective and preventive health benefits through the relevant additions and changes to the following subchapters in the Hospital Licensing Standards: Subchapter 5, Administrative and Hospital-Wide Services, 12, Emergency Department, 19, Obstetrics, and 36, Satellite Emergency Departments.

A summary of the proposed amendments and new rule follows:

Proposed new N.J.A.C. 8:43G-5.5(h) would require hospitals to develop and implement written policies and procedures for identifying and supporting the needs of a breastfeeding mother and/or child at the point of entry into the facility.

Proposed new N.J.A.C. 8:43G-12.2(j) and 12.4(e), respectively, would require hospitals to develop and implement written policies and procedures for identifying and supporting the needs of a breastfeeding mother and/or child in the emergency department.

Proposed amendments at N.J.A.C. 8:43G-19.1(b) would add definitions for the following items: "American Nurses Credentialing Center," "boarder baby," "Clinical Practice Guidelines for Management of Hyperbilirubinemia," "Construction Guidelines," "core competencies," "expression," "formula," "formula supplementation," "gifts and promotional materials," "hand expression," "implementing the Joint Commission Perinatal Care Core Measure on Exclusive Breast Milk Feeding," "International Board of Lactation Consultant Examiners," "lactation consultant," "lactation support room," "latch," "LDR room," "maternal postpartum room," "mother-infant room," "National Certification Corporation for the Obstetric, Gynecologic, and Neonatal Nursing Specialties," "perinatal," "rooming-in," and "United States Breastfeeding Committee."

The Clinical Practice Guidelines for Management of Hyperbilirubinemia are clinical practice guidelines established by the American Academy of Pediatrics and would be incorporated by reference. The Construction Guidelines are guidelines for the design and construction of health care facilities published by the American Society for Healthcare Engineering of the American Hospital Association and would be incorporated by reference. Implementing the Joint Commission Perinatal Care Core Measure on Exclusive Breast Milk Feeding is the publication developed by the United States Breastfeeding Committee to facilitate exclusive breastfeeding in hospitals and would be incorporated by reference.

Proposed amendments at N.J.A.C. 8:43G-19.2(a) would require hospitals to develop written policies and procedures for the obstetrics unit. The amendments further add the following requirements to the policies and procedures: competence of obstetrics staff regarding infant feeding, distribution of printed materials about infant feeding, cultural competence of obstetrics staff, professional resources for use by obstetrics staff, formula supplementation, rooming-in, pacifier use, breastfeeding assistance, and labeling and storage of breast milk and infant formula. The amendments remove existing language regarding rooming in and oral discharge instructions and replace them with new rooming in and discharge planning (that is, the distribution of gifts and promotional materials, early discharge, and maternal education concerning infant feeding). The proposed amendment also would clarify existing language regarding visitation.

Proposed new N.J.A.C. 8:43G-19.3(d) would require hospitals to provide for all qualified obstetrics staff an education and training program that includes methods of infant feeding (that is, breastfeeding and formula feeding); uses current, evidence-based source materials free of commercial interests targeted for professionals; reviews the facility's

policies, procedures, and printed materials regarding infant feeding; and evaluates the training program's contents and efficacy at least every three years.

Proposed recodified N.J.A.C. 8:43G-19.3(e) would require hospitals designated as a Community Perinatal Center-Intensive or Regional Perinatal Center to provide in-house training in perinatal care by an advanced practice nurse and sets the qualifications for that advanced practice nurse. The reference to the American Nurses' Association is proposed for deletion because it no longer provides certification and is replaced with the certification in Perinatal Nursing conferred by the American Nurses Credentialing Center. The references to the provision of regional staff training and consultation provided by the advanced practice nurse would be deleted. The advanced practice nurse is only responsible for in-house training in perinatal care. The Maternal Child Health Consortia is responsible for consultation with regional staff.

Proposed new N.J.A.C. 8:43G-19.9 would require hospitals to establish an interdisciplinary breastfeeding team, designate the issues for the team to address, and specify the frequency of team meetings, which would occur at least annually.

Proposed new N.J.A.C. 8:43G-19.12(d) would require hospitals to develop and implement written policies and procedures using evidence-based resources regarding perinatal patient care that address: allowing the newborn to remain with the mother or primary caregiver during the first hour following delivery, performing newborn assessments while the newborn remains with the mother, unless contraindicated, the offer of support and assistance to mothers who wish to breastfeed their newborns during the first hour after an infant's birth, and the review of these policies and procedures at least every three years.

Existing N.J.A.C. 8:43G-19.14(b) and (c) are proposed for deletion and would be replaced with new subsections (b) and (c) as described below.

Proposed new N.J.A.C. 8:43G-19.14(b) would ensure that hospitals offer each mother a comprehensive evaluation of infant feeding (that is, breastfeeding and/or formula feeding, as appropriate) and follow-up assessments, as necessary, performed by a lactation consultant or an obstetrics staff member with demonstrated core competencies in infant feeding. In addition, the proposed amendment would require hospitals to provide a qualified obstetrics staff member to assist the mother with hand expression and/or the use of a breast pump, if necessary.

Proposed new N.J.A.C. 8:43G-19.14(c) would require hospitals to ensure that appropriate obstetrics staff document in a mother's medical record a plan for those patients discharged less than 48 hours after delivery and for maternal education that would include supportive community-based resources in accordance with the mother's chosen method of infant feeding.

Proposed amendments at N.J.A.C. 8:43G-19.15(e) would implement the recently enacted amendments at N.J.S.A. 26:2-111.4 by requiring hospitals to conduct pulse oximetry on all newborns no sooner than 24 hours after birth for the early detection of congenital heart defects. The Department also is proposing to correct statutory citations and modify language in the existing rule for accuracy and clarity.

Proposed amendments at N.J.A.C. 8:43G-19.15(h) would require hospitals to ensure the following is documented in a newborn's medical record: administration of, and assessment of the newborn's response to, vitamin K; results of infant feeding evaluations and follow-up assessments; an interdisciplinary comprehensive treatment plan that addresses recommendations regarding breastfeeding and/or formula-feeding; formula supplementation; risk assessment for hyperbilirubinemia; and measurement of pre-discharge serum or transcutaneous bilirubin and parental counseling about hyperbilirubinemia, when applicable.

Proposed amendments at N.J.A.C. 8:43G-19.30(a) would require hospitals to provide the following additional functional areas for newborn care: LDR rooms, maternal postpartum rooms, mother-infant rooms, and lactation support rooms.

Existing N.J.A.C. 8:43G-19.31(b) is proposed for deletion as this subsection is included as new paragraph (b)2, discussed below.

Proposed new N.J.A.C. 8:43G-19.31(b) would require hospitals to ensure that functional areas for maternal/infant care are equipped with readily available breast pumps and collection kits; indirect, high-

intensity, or portable lighting; and other specified exam items that shall be available or immediately accessible in the unit.

Proposed new N.J.A.C. 8:43G-19.31(c) would require hospitals to facilitate a mother's continuous care of her infant and a physician's examination of a newborn in all maternal postpartum and mother-infant rooms.

Recodified N.J.A.C. 8:43G-19.31(g) is proposed for amendment to require hospitals to maintain a temperature of 72 to 78 degrees Fahrenheit, rather than 75 degrees Fahrenheit, and a relative humidity between 30 to 60 percent, rather than 50 percent, in newborn functional care areas.

Proposed new N.J.A.C. 8:43G-19.34(i) would require hospitals to make available one lactation support room for consultation, breastfeeding, and expression of breast milk. The references to one multi-purpose room, consultation, lactation training, and conferences would be deleted. One multi-purpose room would not be needed because consultations and breastfeeding would occur in the lactation support room and lactation training and conferences could be held in conference rooms that already exist in all obstetrics hospitals for those purposes.

Proposed new N.J.A.C. 8:43G-36.3(b)5 would require satellite emergency departments (SEDs) to develop and implement written policies and procedures for identifying and supporting the needs of a breastfeeding mother and/or child who present for treatment at an SED.

As the Department has provided a 60-day comment period on this notice of proposal, pursuant to N.J.A.C. 1:30-3.3(a)5, this notice is excepted from the rulemaking calendar requirement as set forth at N.J.A.C. 1:30-3.1 and 3.2.

#### Social Impact

The issue of breastfeeding vs. formula feeding has sparked personal and passionate debates nationally, regionally, and here in New Jersey.

In the midst of the breastfeeding debate, the Department understands and appreciates both sides and respects the rights of breastfeeding mothers, as well as mothers who choose to use formula. These proposed amendments and new rule clearly and specifically mandate all hospitals in New Jersey to develop written policies and procedures that give all mothers the option to choose exclusive breastfeeding, formula feeding, or a combination of both. In addition, the proposed amendments and new rule ensure that all mothers in New Jersey receive assistance and community resources regarding their preferred method of infant feeding.

As noted in a 2011 Department publication, *Breastfeeding and New Jersey Maternity Hospitals: A Comparative Report*, "The choice to breastfeed is personal, but that choice can either be supported or undermined by what happens in the hospital in the first few days after delivery." Similarly, according to The Joint Commission's "Speak Up" Campaign, which encourages mothers to ask questions about breastfeeding early on and in the hospital, "Breastfeeding is natural for you and your baby, but it is a skill that needs to be learned." ([http://www.jointcommission.org/assets/1/18/Breastfeeding\\_final\\_7\\_19\\_11.pdf](http://www.jointcommission.org/assets/1/18/Breastfeeding_final_7_19_11.pdf) [August 23, 2012].)

According to the 2012 Breastfeeding Report Card published by Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, New Jersey's breastfeeding rates have improved. (<http://www.cdc.gov/breastfeeding/data/reportcard.htm> [August 23, 2012].) The Department believes that New Jersey must focus on providing better support in our hospitals and communities to continue this trend.

These proposed amendments and new rule are a core element of the "Statewide Comprehensive and Integrated Breastfeeding Initiative" (Initiative) proposed in 2010 by New Jersey's Statewide Chronic Disease Prevention/Health Promotion Steering Committee. The Initiative provides a coordinated, governmental infrastructure that promotes collaboration and supports breastfeeding at negligible cost. In addition, the Initiative is more comprehensive than a similar project recently announced by The Joint Commission. Furthermore, the Department believes the proposed amendments and new rule combined with the Initiative would likely facilitate education.

The Department regards breastfeeding as a low-cost, low-tech method of infant feeding with preventive and far-reaching health benefits for mothers and infants. Moreover, the Department takes note in existing literature that the practice of breastfeeding has been cited as producing

significant cost savings for health providers, employers, and society. The Department believes the proposed amendments and new rule would give rise to improved mother and infant health outcomes and reduced healthcare costs for New Jersey residents.

The U.S. Department of Health and Human Services publishes "Healthy People," which includes science-based, 10-year national objectives for promoting health and preventing disease. "Healthy People 2020" continues to identify breastfeeding as a national priority and recommends that the initiation of breastfeeding in the early postpartum period should be occurring at a rate of 81.9 percent. (CDC, U.S. Department of Health and Human Services. <http://www.cdc.gov/breastfeeding/policy/hp2010.htm> [August 22, 2012].)

According to the CDC's most recent statistics, 79.7 percent of New Jersey mothers reported ever having breastfed their infants. (Breastfeeding Report Card, 2012 United States: Outcome Indicators. <http://www.cdc.gov/breastfeeding/data/reportcard2.htm> [August 23, 2012].) The Department believes that the proposed amendments and new rule would aid New Jersey in achieving the national objective.

According to CDC's national Maternity Practices in Infant Nutrition and Care (mPINC) survey, conducted in 2009, New Jersey's "Composite Quality Practice Score" is 62/100 and "New Jersey's State Rank" is 33/52. ([www.cdc.gov/breastfeeding/pdf/mPINC/states/mPINC\\_2009\\_New\\_Jersey.pdf](http://www.cdc.gov/breastfeeding/pdf/mPINC/states/mPINC_2009_New_Jersey.pdf) [July 25, 2012].) This information indicates that New Jersey could benefit from improved hospital policies and practices regarding breastfeeding.

The Department finds that a number of maternal and child health risks and their related costs are associated with not breastfeeding. For example, the Department notes that a recent article published in *The American Journal of Clinical Nutrition* reported that the obesity risk at school age was reduced by 15-25 percent with early breastfeeding compared with formula feeding. ("Can infant feeding choices modulate later obesity risk?" *Am J Clin Nutr* 2009; 89(suppl):1502S-8S.) This information is especially important because New Jersey has one of the highest rates of childhood obesity in the United States for two- to five-year-olds from low-income households.

New Jersey has one of the nation's highest supplementation rates of breastfed infants. FHS found that over a 12-year period (1997-2009) in New Jersey, the rate of exclusive breastfeeding at discharge decreased by seven percent and the rate of formula supplementation increased by 23 percent. The proposed amendments and new rule aim to increase exclusive breastfeeding by eliminating unnecessary formula supplementation.

#### Economic Impact

The Department anticipates that an increase in breastfeeding would result in reduced healthcare expenditures for mothers and infants at the time of birth and into the future. Furthermore, the Department recognizes a correlation between breastfeeding and a reduction in the incidence and cost of various diseases in children and adults, such as childhood asthma, otitis media, breast cancer, and Type 2 diabetes. The Department notes in existing literature the correlation between the implementation of hospital policies that support breastfeeding, the dramatic increase in exclusive breastfeeding rates, and the improved maternal and infant health outcomes post-discharge.

The Department believes that breastfeeding would produce fiscal savings for health care expenses, employer costs, and public funds (Medicaid/Medicare/State dollars), including formula costs via the Federal Women, Infants, and Children Program. The Department relies on research that projects an annual national savings of two to four billion health care dollars if all women breastfed their infants for as little as 12 weeks. (JB Saunders. "The economic benefits of breastfeeding." NCSL Legisbrief. 2010 Jan;18(1):1-2.)

The New Jersey Hospital Association (NJHA) noted that the proposed amendments and new rule would minimally increase costs because of the additional staff time required (1) due to the proposed activities of an Interdisciplinary Breastfeeding Team as described at N.J.A.C. 8:43G-19.9 (that is, addressing hospital practices affecting breastfeeding, determining how to improve breastfeeding outcomes, and finding solutions to reduce hospital barriers to breastfeeding); and (2) due to the proposed change in procedures as noted at N.J.A.C. 8:43G-19.12 (for

example, allowing newborn to remain with the mother or primary caregiver following delivery (unless contraindicated), as applicable).

According to the NJHA, the above requirement would involve minimal cost and a couple of hours of time over the course of a year. Furthermore, the NJHA noted that although, overall, time and costs would increase minimally, it is unlikely that any hospital would lay off staff, reallocate job requirements, cut back services, or close because of the financial impact of these proposed amendments and new rule.

With regard to proposed N.J.A.C. 8:43G-12.4(e)1ii, the NJHA noted that space to facilitate the expression, storage, and use of breast milk may be a problem in emergency departments. This issue would likely be resolved at minimal expense because a mother could express breast milk using a readily available breast pump and feed her infant while positioning herself behind a drawn curtain for privacy. In addition, the hospital could develop policies and procedures for storing expressed breast milk in portable coolers or in a refrigerator in a room nearby the emergency department.

According to the NJHA, the estimated cost to hospitals would be minimal. Many hospitals likely already meet the proposed requirements. In recent years, the New Jersey Chapter of the American Academy of Pediatrics (AAPNJ)/Pediatric Council on Research and Education (PECORE), in partnership with the Department's Office of Nutrition and Fitness/ShapingNJ, awarded 10 New Jersey hospitals with \$10,000 CDC-integrated grants to implement the WHO's 10 Steps.

Some New Jersey hospitals, including the 10 mentioned above, already practice aspects of the proposed requirements. For example, hospitals that were awarded \$10,000 grants have trained or are currently training staff. According to expense reports from the New Jersey Baby Friendly Hospital Initiative (NJ BFHI) with the AAPNJ and ShapingNJ, hospital costs (one time only) to train an entire obstetrics staff range from \$4,000 to \$8,000. At all hospitals, staff members who have been trained would be available to provide future training. There are also on-line training programs, some at a reasonable cost and others free, such as AAP curriculum and University of Virginia Medical School On-line Education (UVA MOC), that could be used to train obstetrics, administrative, and emergency department staff.

The Department notes that the proposed amendments and new rule do not specify the size of mother-infant rooms, so the proposed amendments and new rule do not mandate a minimum size requirement. Based on the "2010 Construction Guidelines," the minimum requirement for a single patient room is 120 square feet. When hospitals use an existing single-patient, licensed obstetrics room as a mother-infant room, there would be no additional space required for an infant and, therefore, no additional cost. Additionally, the Department takes note that the "2010 Construction Guidelines" provide that every postpartum room is to have 12 electrical outlets, which would be sufficient to provide for the equipment to be made available in the functional areas for newborn care as proposed by the amendments.

With regard to N.J.A.C. 8:43G-19.34, NJHA questioned whether the mother-infant room could be used for consultation, breastfeeding, and expression of breast milk, and other stakeholders responded that at least one room for these events would be needed for the following situations: (1) boarder babies; and (2) mother has a roommate and needs a quiet, private place to feed her baby, get help with a breastfeeding problem (that is, consultation), and/or to express her milk. A "lactation support room" would be defined as one room designated for consultations, expression of breast milk, and/or breastfeeding or a private space designated on a temporary basis for such purposes. Therefore, a private mother-infant room could qualify as a "lactation support room" and, thus, reduce any potential expense or reallocation of resources for hospitals that have not already made such a room available.

#### Federal Standards Statement

There are no Federal standards regarding the support of breastfeeding in general hospitals, therefore a Federal standards analysis is not required.

#### Jobs Impact

The NJHA does not anticipate that hospitals would lay off staff, reallocate job requirements, cut back services, or close because of the financial impact of these proposed amendments and new rule. The Department expects no impact on manufacturing jobs in New Jersey.

Currently, there are no formula manufacturers in New Jersey, so no such jobs would be lost.

#### Agriculture Industry Impact

The proposed amendments and new rule would not have any impact on the agriculture industry in New Jersey.

#### Regulatory Flexibility Statement

The proposed amendments and new rule would impose requirements on general hospitals licensed by the Department pursuant to P.L. 1971, c. 136 (N.J.S.A. 26:2H-1 et seq.). General hospitals are not considered to be "small businesses" within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as each generally employs more than 100 people full-time. Therefore, a regulatory flexibility analysis is not required.

#### Housing Affordability Impact Analysis

The proposed amendments and new rule would not have an impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the amendments and new rule affect only the support of breastfeeding in general hospitals in New Jersey.

#### Smart Growth Development Impact Analysis

The proposed amendments and new rule have no impact on housing production in Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan. The amendments and new rule concern hospital policies and procedures for breastfeeding.

Full text of proposal follow (additions indicted in boldface thus; deletions indicated in brackets [thus]):

8:43G-5.5 Administrative and hospital-wide patient services

(a)-(g) (No change.)

(h) The hospital shall develop and implement written policies and procedures for identifying and supporting the needs of a breastfeeding mother and/or a child at the point of entry into the facility, that is, at registration in the emergency department, upon arrival for same-day surgery, and on admission to the facility.

1. These policies and procedures shall require appropriate staff to:

i. Document breastfeeding needs in the medical record; and

ii. Review these policies and procedures every three years and make revisions at any time as necessary.

8:43G-12.2 Emergency department policies and procedures

(a)-(i) (No change.)

(j) The hospital shall develop and implement written policies and procedures to support breastfeeding mothers in the emergency department.

1. These policies and procedures shall require responsible staff to:

i. Determine whether a woman who presents for treatment at the emergency department is breastfeeding;

ii. Facilitate the expression, storage, and use of the breast milk from the mother, as necessary;

iii. Document the findings in (j)1i and ii above in the medical record as soon as possible or before the woman is released from the emergency department area; and

iv. Review these policies and procedures every three years and revise at any time as necessary.

8:43G-12.4 Additional pediatric requirements

(a)-(d) (No change.)

(e) The hospital shall develop and implement written policies and procedures to support breastfeeding while a child is in the emergency department.

1. These policies and procedures shall require responsible staff to:

i. Determine whether a child, who presents at the emergency department for treatment, is breastfeeding;

ii. Facilitate the expression, storage, and use of the breast milk from this child's mother, as necessary;

iii. Assess the individual feeding needs of a breastfeeding child who has been referred for inpatient hospital admission;

iv. Document the findings in (e)1i, ii, and iii above in the medical record as soon as possible or before the child is released from the emergency department area; and

v. Review these policies and procedures every three years and revise at any time as necessary.

8:43G-19.1 Scope of obstetrical standards—definitions; structural organization

(a) (No change.)

(b) The following terms, when used in this subchapter, shall have the following meanings:

... "American Nurses Credentialing Center" means an organization that is a subsidiary of the American Nurses Association, which certifies nurses in specialty practice areas, and for which the contact information is American Nurses Credentialing Center, 8515 Georgia Avenue, Suite 400, Silver Spring, MD 20910-3492, telephone (800) 284-2378, website <http://www.nursecredentialing.org>.

... "Boarder baby" means an infant abandoned in a hospital, or an infant still in the nursery after the mother's discharge for any reason, even if only temporarily.

"Clinical Practice Guidelines for Management of Hyperbilirubinemia" means the clinical practice guidelines established by the American Academy of Pediatrics Subcommittee on Hyperbilirubinemia, as set forth in Management of Hyperbilirubinemia in the Newborn Infant 35 or More Weeks of Gestation, (Pediatrics 2004;114:297), incorporated herein by reference, as amended and supplemented, available at <http://pediatrics.aappublications.org/content/114/1/297.full.html>.

... "Construction Guidelines" means the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, incorporated herein by reference, as amended and supplemented, published by the American Society for Healthcare Engineering of the American Hospital Association (ASHE), for which the contact information is ASHE, 155 North Wacker Drive, Chicago, IL 60606, (800) 242-2626, [www.fgiguidelines.org](http://www.fgiguidelines.org).

... "Core competencies" means the knowledge, skills, and judgment that a hospital determines to be essential to ensure the proficiency of staff in the independent performance of a particular patient care service.

"Expression" means a manual technique accomplished with the aid of an external device (that is a breast pump) to extract milk from a lactating woman.

"Formula" means infant formula as that term is defined at 21 U.S.C. § 321(z), which is incorporated herein by reference.

"Formula supplementation" means the practice of feeding breastfed infants prior to six months of age commercially prepared infant formula in addition to, or as a substitute for, breast milk.

"Gifts and promotional materials" means products and information provided free by commercial vendors or by hospitals for distribution to new mothers. These items may include infant formula, diaper bags, nursing pads, cooler packs for expressed breast milk or formula, and printed materials regarding infant feeding.

"Hand expression" means a manual technique to extract breast milk from a lactating woman that is accomplished without the aid of an external device.

"Implementing the Joint Commission Perinatal Care Core Measure on Exclusive Breast Milk Feeding" means the publication developed by the United States Breastfeeding Committee to facilitate exclusive breastfeeding in hospitals, for which citation to the current edition is, Implementing the Joint Commission Perinatal Care Core Measure on Exclusive Breast Milk Feeding, Rev. ed., Washington, D.C.: United States Breastfeeding Committee; 2010, which is incorporated herein by reference, as amended and supplemented and which can be accessed at: <http://www.usbreastfeeding.org/Portals/0/Publications/Implementing-TJC-Measure-EBMF-2010-USBC.pdf>;

“International Board of Lactation Consultant Examiners” means the independent international certification body that confers the International Board Certified Lactation Consultant (IBCLC) credential, and for which the contact information in the United States is International Board of Lactation Consultant Examiners in the Americas, 6402 Arlington Blvd., Suite 350, Falls Church, VA 22042, email [ibclce@ibclce.org](mailto:ibclce@ibclce.org), telephone (703) 560-7330, facsimile (703) 560-7332, website: <http://americas.ibclce.org/contact>.

“Lactation consultant” means an individual who is qualified to use the credential, “IBCLC,” denoting certification as a lactation consultant conferred by the International Board of Lactation Consultant Examiners.

“Lactation support room” means a room designated for consultations, expression of breast milk, and/or breastfeeding, or a private space designated on a temporary basis for such purposes.

“Latch” means the attachment of a newborn to the breast for breastfeeding.

“LDR room” means a labor-delivery-recovery room designed to accommodate the birthing process from labor through delivery and recovery of a mother and her infant.

“Maternal postpartum room” means an obstetrics patient room where a mother stays after the birth of her newborn.

“Mother-infant room” means an obstetrics patient room where mother(s) and infant(s) stay after delivery and receive care in this continuously rooming-in space during the post-partum period. The room shall comply with the space requirement indicated in the Construction Guidelines.

“National Certification Corporation for the Obstetric, Gynecologic, and Neonatal Nursing Specialties” means the not-for-profit organization that provides a national credentialing program for nurses in the obstetric, gynecologic, and neonatal nursing specialties, and for which the contact information is National Certification Corporation, 142 E. Ontario Street, Suite 1700, Chicago, IL 60611, website: [www.nccwebsite.org](http://www.nccwebsite.org).

“Perinatal” means occurring in, concerned with, or being in the period around the time of birth.

“Rooming-in” means the practice of placing the newborn(s) with the mother in the “maternal postpartum room” or “mother-infant room” 24 hours a day to facilitate maternal-infant bonding and breastfeeding on demand, as applicable, and to allow patient care to be given to mother and infant in the same room.

“United States Breastfeeding Committee” means the independent nonprofit organization whose mission is to improve the nation’s health by working collaboratively to protect, promote, and support breastfeeding, and for which the contact information is United States Breastfeeding Committee, 2025 M Street, NW, Suite 800, Washington, DC 20036; phone: (202) 367-1132 ; fax: (202) 367-2132; email: [office@usbreastfeeding.org](mailto:office@usbreastfeeding.org); available at: <http://www.usbreastfeeding.org>.

(c)-(g) (No change.)

#### 8:43G-19.2 Obstetrics policies and procedures

(a) The [obstetric service] hospital shall [have written policies and procedures that are reviewed at least once every three years, revised more frequently as needed, and implemented. These policies and procedures shall be available] develop and implement written policies and procedures, review them every three years and make revisions at any time as necessary, make current copies available to obstetrics staff in all areas of the obstetrics service, and [include at least] address:

1.-7. (No change.)

8. A visitors policy that includes [who may visit the unit and at what times] permitted visitors to the obstetrics unit, visitation hours, security procedures [for monitoring and controlling visitors], and infection control [instructions] measures;

[9. Guidelines for rooming in, if applicable; and

10. A system to provide written and oral discharge instructions from professional staff to patients upon discharge.]

9. Core competencies for the initiation and maintenance of infant feeding that are developed using evidence-based reference materials including, but not limited to, Implementing the Joint Commission Perinatal Care Core Measure on Exclusive Breastmilk Feeding.

i. The hospital shall ensure that all staff demonstrate proficiency in core competencies prior to providing related patient care;

10. Distribution of printed materials about infant feeding to the prenatal patient, at the pre-admission contact and on admission. These materials shall be developed:

i. Using evidenced-based source materials free of commercial interests that address maternal choice for infant feeding including, but not limited to, maternal and child health outcomes related to breastfeeding and formula feeding; successful breastfeeding management, and potential contraindications to breastfeeding, including maternal medications and infections; and

ii. In all languages spoken exclusively by at least 10 percent of the hospital community;

11. A program that ensures the cultural competence of obstetrics staff regarding childbirth, lactation, and the provision of patient care services that is delivered in a language the mother understands.

i. When necessary, obstetrics staff shall make use of a language line or interpreter and maintain the quality, privacy, and confidentiality of any interpreted conversations;

12. Professional resources regarding lactation, including those addressing medications that may impact breastfeeding, which are current and accessible to all staff in the obstetrics service;

13. Formula supplementation for a breastfed newborn when medically indicated or when requested by the mother;

14. Rooming-in, taking into account the mother’s preference, available space, and any medical or other contraindication;

15. The use of pacifiers during the neonatal period, including the benefits of delaying pacifier use in healthy, full-term breastfed infants until breastfeeding is well established;

16. The option to exclusively breastfeed and breastfeeding assistance consistent with the lactation education requirements set forth at N.J.A.C. 8:43G-19.3(d), including, but not limited to, instruction in the hand expression of breast milk and in recognizing infant feeding cues.

i. The labeling and storage of breast milk, in accordance with N.J.A.C. 8:43G-19.31(n), to include the infant’s name and date and time of storage;

17. The option to formula feed and formula-feeding assistance for mothers who use formula or a combination of breast milk and formula.

i. The labeling and storage of infant formula to include the infant’s name and date and time of storage; and

18. A hospital discharge policy that addresses:

i. The distribution of gifts and promotional materials and the impact of such distribution on exclusive breastfeeding and formula feeding;

ii. A plan for patients who will be discharged less than 48 hours after delivery, including the need for home health services; and

iii. Maternal education about infant feeding consistent with exclusive breast feeding, formula feeding, or a combination, as applicable, and the availability of the appropriate community-based resources.

(b)-(g) (No change.)

#### 8:43G-19.3 Obstetrics staff qualifications

(a)-(c) (No change.)

(d) For all obstetrics staff who provide breastfeeding care and consultation, the hospital shall develop and implement an education and training program for employee orientation and annual employee in-services, thereafter, that addresses:

1. Training content and printed teaching materials concerning the topics specified at N.J.A.C. 8:43G-19.2(a) that are developed using current evidence-based source materials and are free of commercial interests;

2. A review of hospital policies and procedures that support breastfeeding, including those required at N.J.A.C. 8:43G-19.2, 19.12, 19.14, and 19.15;

3. A review of the printed materials that the hospital provides to obstetrics patients and strategies for supporting and reinforcing the contents of those materials; and

4. A review of the training program's content and efficacy every three years and revisions made at any time as necessary.

[(d)] (e) [Hospitals] A hospital designated as a CPC-Intensive or Regional Perinatal Center shall have an advanced practice nurse who is responsible for in-house [and regional staff] training [and consultation] in perinatal care.

1. This individual shall be a registered professional nurse with a master's degree in a maternal and child health nursing specialty from an accredited college or university and who has:

[1.] i. (No change in text.)

[2.] ii. Certification in Perinatal Nursing conferred by the American Nurses Credentialing Center or the National Certification Corporation for the Obstetric, Gynecologic, and Neonatal Nursing Specialties [or American Nurses' Association].

8:43G-19.9 [(Reserved)] Interdisciplinary breastfeeding team

(a) The hospital shall establish an interdisciplinary breastfeeding team that represents the various professional healthcare disciplines and lay advocacy groups to include, at a minimum, nurses, nurse managers, maternal-child physicians, health educators, breastfeeding support staff, pharmacists, and patient/community representatives.

(b) The members of the interdisciplinary breastfeeding team shall address:

1. Hospital practices affecting breastfeeding;

2. The hospital's Continuous Quality Improvement Program on how to improve breastfeeding outcomes, as requested; and

3. Solutions to reducing hospital barriers to breastfeeding.

(c) The interdisciplinary breastfeeding team shall meet at least annually.

8:43G-19.12 [Labor, delivery, anesthesia and recovery] Perinatal patient services

(a)-(c) (No change.)

(d) The hospital shall develop and implement written policies and procedures using evidence-based resources regarding perinatal patient care, which address:

1. Allowing the newborn to remain with the mother or a primary caregiver as the preferred source of body warmth during the critical first hour following delivery, unless such contact is contraindicated or not accepted by the mother;

2. Performing newborn assessments while the newborn is with the mother or primary caregiver, unless contraindicated;

3. Offering support to mothers who wish to breastfeed their newborns and assisting, as necessary, to facilitate positioning and latch during the first hour after an infant's birth; and

4. Reviewing these policies and procedures every three years and making revisions at any time as necessary.

8:43G-19.14 Postpartum patient services

(a) (No change.)

[(b)] If a patient is discharged less than 48 hours after delivery, early follow-up care shall be offered to the patient and arranged on request. The patient's medical record shall include documentation of the offer and the plan for provision of home health services if the offer is accepted.

(c) The hospital shall have staff available to advise postpartum patients in order to prevent difficulties with breastfeeding during the hospital stay.]

(b) The hospital shall provide each mother a comprehensive evaluation of infant feeding (that is breastfeeding and/or formula feeding, as appropriate) and follow-up assessments, as necessary, performed by a lactation consultant or an obstetrics staff member with demonstrated core competencies in infant feeding.

1. An obstetrics staff member with the qualifications described in (b) above shall teach and assist a mother with hand expression and/or the use of a breast pump within four hours of the mother either being

separated from her infant(s) or experiencing ineffective breastfeeding.

(c) Discharge planning for a postpartum patient shall be documented in the medical record by the appropriate obstetrics staff and shall address:

1. A plan for patients who will be discharged less than 48 hours after delivery, including the need for home health services; and

2. Maternal education about infant feeding consistent with exclusive breastfeeding, formula feeding, or a combination of both, as applicable, and appropriate community-based resources.

8:43G-19.15 Newborn care policies and procedures

(a)-(d) (No change.)

(e) The hospital shall [comply with State laws for screening infants] **screen all newborns** for high risk factors associated with hearing impairment [(pursuant to N.J.S.A. 26:2-[101 et seq.])] **103.4**, [early detection of] biochemical disorders [in newborns (pursuant to N.J.S.A. 26:2-[110 and]111)], reporting congenital defects (N.J.S.A. 26:8-40.20 et seq.), and completing birth certificates (N.J.S.A. 26:8-28) and death certificates], **and congenital heart defects no sooner than 24 hours after birth by using pulse oximetry pursuant to N.J.S.A. 26:2-111.4.**

1. The hospital shall report congenital defects and shall complete birth certificates and death certificates pursuant to N.J.S.A. 26:8-40.21 and 26:8-28, respectively.

(f)-(g) (No change.)

(h) The hospital shall require a newborn's medical record [shall include at least] to contain documentation of the following:

1.-11. (No change.)

12. [A record of the] **An initial physical examination[.] performed[, signed, and dated] by a physician, which bears the physician's signature and the date of the examination;**

13. A [record of a] physical examination [on discharge or transfer to another facility, including head circumference, signed, and dated by a physician] **that includes measurement of the newborn's head circumference, performed at discharge or upon transfer to another facility by a physician, and which bears the physician's signature and the date of the examination; [and]**

[14. Documentation of eye prophylaxis, as recommended by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists for ophthalmia neonatorum, administration of any other medication or treatment and response, and performance of inborn error and hearing screenings.]

14. The administration of, and the newborn's response to, vitamin K, eye prophylaxis for ophthalmia neonatorum, and any other medication or treatment;

15. The results of the infant-feeding evaluation and any follow-up assessments;

16. An interdisciplinary comprehensive treatment plan that addresses the recommendations regarding either breastfeeding or formula-feeding based upon the assessments conducted pursuant to (h)15 above;

17. Formula supplementation of breast milk; and

18. Assessment of the risk for hyperbilirubinemia in every newborn born at 35 or more weeks of gestation, as performed by the newborn's physician in accordance with the Clinical Practice Guidelines for Hyperbilirubinemia.

i. The newborn's physician shall document in the medical record the newborn's pre-discharge serum or transcutaneous bilirubin measurement and parental counseling about hyperbilirubinemia, when applicable.

8:43G-19.30 Functional areas for newborn care

(a) Functional areas for newborn care shall be as follows:

1. Neonatal [Resuscitation Area] **resuscitation area** or [Room] **room**;

2. Admission/observation/[Continuing Care Nursery]**continuing care nursery** or [Area] **area**;

3. Normal [Newborn Nursery] **newborn nursery** or [Holding Nursery] **holding nursery**;

4. Infectious [Isolation Nursery] **isolation nursery**;

5. Intermediate [Care Nursery; and] **care nursery**;

6. Neonatal [Intensive Care Nursery.] **intensive care nursery**;

- 7. LDR rooms;
- 8. Maternal postpartum rooms;
- 9. Mother-infant rooms; and
- 10. Lactation support room.

8:43G-19.31 General newborn care functional area requirements

(a) (No change.)

[(b) Provisions shall be made for indirect lighting and high-intensity lighting in all nurseries. The level of general lighting shall be adjustable to satisfy diagnostic and procedural requirements.]

**(b) The hospital shall ensure that functional areas of maternal/infant care, as appropriate, are equipped with the following:**

- 1. Readily available breast pumps and collection kits;
- 2. Indirect, high-intensity, or portable lighting that shall be available and adjustable to satisfy diagnostic and procedural requirements; and
- 3. Exam items that shall be available or immediately accessible in the unit including, at a minimum, otoscopes, ophthalmoscopes, infant scale, exam gloves, and a hand-washing sink.

**(c) The hospital shall make provisions in all maternal postpartum rooms and mother-infant rooms, wherever possible, to facilitate a mother's continuous care of her infant and a physician's examination of a newborn in the post-partum room.**

Recodify existing (c)-(e) as (d)-(f) (No change in text.)

[(f)] **(g) A temperature of [75] 72 to 78 degrees Fahrenheit and a relative humidity of [50] 30 to 60 percent shall be maintained.**

Recodify existing (g)-(s) as (h)-(t) (No change in text.)

8:43G-19.34 Normal newborn nursery or holding nursery

(a)-(h) (No change.)

(i) There shall be at least one [multi-purpose] **lactation support room** available for consultation, [breast feeding, lactation training and conferences] **breastfeeding and expression of breast milk.**

(j)-(p) (No change.)

8:43G-36.3 Services in satellite emergency departments

(a) (No change.)

(b) All satellite emergency departments applying for licensure shall provide the following services:

1.-2. (No change.)

3. Basic radiology services, which shall include at a minimum non-enhanced and non-contrasted radiographs; [and]

4. Emergency contraception, upon request, to sexual assault victims and medically and factually accurate and objective verbal and written information about emergency contraception and sexually transmitted diseases, pursuant to N.J.A.C. 8:43G-12A[.]; and

**5. The hospital shall develop and implement written policies and procedures to support breastfeeding for a mother and/or child who presents at an SED, in accordance with N.J.A.C. 8:43G-12.2(j) and 12.4(e).**

(c)-(d) (No change.)

## LAW AND PUBLIC SAFETY

(a)

### DIVISION OF CONSUMER AFFAIRS NEW JERSEY BOARD OF NURSING Responsibilities of Licensure Proposed Repeal: N.J.A.C. 13:37-5.6

Authorized By: State Board of Nursing, George Hebert, Executive Director.

Authority: N.J.S.A. 45:11-23 et seq., specifically 45:11-24.d(19).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2012-179.

Submit written comments by April 5, 2013 to:

George Hebert, Executive Director  
State Board of Nursing  
Post Office Box 45010  
Newark, New Jersey 07101

The agency proposal follows:

#### Summary

Under N.J.A.C. 13:37-5.6 a licensee holding multiple licenses is to be held to the level of his or her highest licensure regardless of his or her employment status. This rule addresses situations in which a professional licensed as a registered professional nurse and as a licensed practical nurse is working in a position that is not recognized as either a registered professional nursing position or licensed practical nursing position, respectively. The most common example of this is when a registered professional nurse holding a license as a licensed practical nurse is working as a licensed practical nurse. Under N.J.A.C. 13:37-5.6, such an individual would be held to the practice standards of a registered professional nurse, even though he or she was employed as a licensed practical nurse.

The New Jersey Hospital Association (NJHA) has reached out to the Board of Nursing (Board) with concerns about the rule. According to the NJHA, N.J.A.C. 13:37-5.6 has been interpreted as prohibiting hospitals and other healthcare facilities from employing a nurse in any role other than as a registered professional nurse or a licensed practical nurse. The rule does not prohibit such employment; however, the Board wishes to remove any perceived barriers to employment. The Board proposes to repeal N.J.A.C. 13:37-5.6.

The Board has determined that the comment period for this notice of proposal will be 60 days; therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this notice is excepted from the rulemaking calendar requirement.

#### Social Impact

The rule proposed for repeal will have a positive social impact on nurses. NJHA has represented that N.J.A.C. 13:37-5.6 is perceived as prohibiting hospitals and other healthcare entities from employing registered professional nurses or licensed practical nurses in jobs that are not specifically "nursing" jobs and as a result nurses are not being employed in non-nursing jobs. The proposed repeal will remove this perceived barrier to employment.

#### Economic Impact

The rule proposed for repeal may have a beneficial economic impact on nurses in that the repeal removes perceived barriers to employment. The Board does not anticipate that the rule proposed for repeal will have any other economic impact.

#### Federal Standards Statement

A Federal standards analysis is not required because no Federal laws or standards applicable to the subject matter of the rule proposed for repeal.

#### Jobs Impact

By removing perceived barriers to employment, the rule proposed for repeal may increase the number of jobs available to registered professional nurses and licensed practical nurses.

#### Agriculture Industry Impact

The Board does not believe that the rule proposed for repeal will have any impact on the agriculture industry of this State.

#### Regulatory Flexibility Statement

Since the nurses are individually licensed by the Board under the Regulatory Flexibility Act (the Act), N.J.S.A. 52:14B-16 et seq., they may be considered "small businesses" for the purposes of the Act.

The rule proposed for repeal does not impose any costs. The Board does not believe that nurses will need to employ any professional services to comply with the requirements of the rule proposed for repeal. The rule proposed for repeal imposes no compliance, reporting, or recordkeeping requirements.

#### Housing Affordability Impact Analysis

The rule proposed for repeal will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rule would evoke a change in the average costs associated with